

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

PRENTICE R. THOMAS,

Plaintiff,

v.

B. WEAVER, et al.,

Defendants.

Case No. 1:22-cv-01492-BAM

SCREENING ORDER GRANTING
PLAINTIFF LEAVE TO FILE AN
AMENDED COMPLAINT

Doc. 1

THIRTY (30) DAY DEADLINE

Plaintiff Prentice R. Thomas (“Plaintiff”) is a county jail inmate proceeding *pro se* and *informa pauperis* in this civil rights action. Plaintiff’s complaint is currently before the Court for screening. (Doc. 1.)

I. Screening Requirement and Standard

The Court screens complaints brought by persons proceeding in *pro se* and *informa pauperis*. 28 U.S.C. § 1915(e)(2). Plaintiff’s complaint, or any portion thereof, is subject to dismissal if it is frivolous or malicious, if it fails to state a claim upon which relief may be granted, or if it seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B)(ii).

A complaint must contain “a short and plain statement of the claim showing that the pleader is entitled to relief” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere

1 conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell*
2 *Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). While a plaintiff’s allegations are taken as
3 true, courts “are not required to indulge unwarranted inferences.” *Doe I v. Wal-Mart Stores, Inc.*,
4 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and citation omitted).

5 To survive screening, Plaintiff’s claims must be facially plausible, which requires
6 sufficient factual detail to allow the Court to reasonably infer that each named defendant is liable
7 for the misconduct alleged. *Iqbal*, 556 U.S. at 678 (quotation marks omitted); *Moss v. U.S. Secret*
8 *Serv.*, 572 F.3d 962, 969 (9th Cir. 2009). The sheer possibility that a defendant acted unlawfully
9 is not sufficient, and mere consistency with liability falls short of satisfying the plausibility
10 standard. *Iqbal*, 556 U.S. at 678 (quotation marks omitted); *Moss*, 572 F.3d at 969.

11 II. Summary of Plaintiff’s Allegations

12 Plaintiff names as Defendants: (1) B. Weaver (#11520), officer at Fresno County Sheriff’s
13 Office, (2) Justin Garcia, Fresno Police Officer (P2019), (3) Adriana Ponce, Fresno Police Officer
14 (P1716), and (4) Lily Hitchner, M.D. at Community Regional Medical Center (“CRMC”).

15 In claim 1, Plaintiff alleges a violation of Due Process. On September 8, 2022, while
16 Plaintiff was in the custody of B. Weaver, B. Weaver ordered registered nurse of CRMC to
17 assault Plaintiff. The RN tackled Plaintiff, Plaintiff hit his head on the hospital floor and severely
18 injured his back and caused mobility issues. Plaintiff also has a hard time sleeping because of the
19 nightmares from the assault and cannot hold his body fluids while sleeping. Plaintiff is not able
20 to hold an erection because of the actions of the registered nurse.

21 In claim 2, Plaintiff alleges a violation of medical care. On August 30, 2022, Plaintiff was
22 brought to the emergency room. Plaintiff complained of pain mostly caused by excessive force
23 by Officer Lily Hitchner, a witness did nothing to help Plaintiff. Plaintiff had been tased. Thirty
24 minutes after Plaintiff left CRMC, he was brought back and admitted into the hospital. Plaintiff
25 had died. Plaintiff was brought back “after he was given 3 cans for narcane after being found non
26 responsive by the Fresno County Jail Sheriff Officers.” On September 8, 2022, Plaintiff was
27 released from CRMC with a treatment plan that has not been followed by the Fresno County jail
28 medical staff of “Well Path.” On September 8, 2022, Plaintiff was assaulted by a registered nurse

1 at CRMC who was the same R.N. who was to care for Plaintiff's medical needs while an inpatient
2 on the 9th floor. On September 8, 2022, the R.N. tackled Plaintiff and caused Plaintiff immense
3 back pain and mobility issues.

4 In claim 3, Plaintiff alleges a violation of his Due Process rights. On August 30, 2022,
5 Plaintiff was assaulted at CRMC by Justin Garcia (p2019) and officer Adriana Ponce (p1716)
6 while Plaintiff was talking to medical staff that Plaintiff was having chess pain and pain on his
7 left side of his body. Officers took turns applying pressure point holds on Plaintiff's neck and
8 other areas. The officers forced Plaintiff to leave CRMC only to return 30 minutes later
9 nonresponsive. CRMC medical staff could not take Plaintiff's blood pressure and other vitals
10 because Fresno Policy officers were crowding around Plaintiff's bed side. Staff was unable to do
11 their job effectively.

12 As remedies, Plaintiff seeks compensatory and punitive damages.

13 **III. Discussion**

14 Plaintiff's complaint fails to comply with Federal Rule of Civil Procedure 8 and fails to
15 state a cognizable claim under 42 U.S.C. § 1983. Because he is proceeding pro se, Plaintiff will
16 be granted leave to amend his complaint to the extent that he can do so in good faith. To assist
17 Plaintiff, the Court provides the pleading and legal standards that appear relevant to his claims.

18 **A. Federal Rule of Civil Procedure 8**

19 Pursuant to Federal Rule of Civil Procedure 8, a complaint must contain "a short and plain
20 statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a). Detailed
21 factual allegations are not required, but "[t]hreadbare recitals of the elements of a cause of action,
22 supported by mere conclusory statements, do not suffice." *Iqbal*, 556 U.S. at 678 (citation
23 omitted). Plaintiff must set forth "sufficient factual matter, accepted as true, to 'state a claim to
24 relief that is plausible on its face.'" *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 570,
25 127 S.Ct. at 1974). While factual allegations are accepted as true, legal conclusions are not. *Id.*;
see also Twombly, 550 U.S. at 556–557.

26 Although Plaintiff's complaint is short, it is not a plain statement of his claims. As a basic
27 matter, the complaint does not clearly allege Plaintiff must state sufficient factual support for each
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1 claim. Plaintiff files an amended complaint, it should be a short and plain statement of his claims,
2 and must include factual allegations identifying what happened, when it happened and who was
3 involved. Fed. R. Civ. P. 8.

4 **B. Federal Rules of Civil Procedure 18 and 20**

5 The Court cannot determine if the allegations violate the rules against joinder. Plaintiff
6 may not bring unrelated claims against unrelated parties in a single action. Fed. R. Civ. P. 18(a),
7 20(a)(2); *Owens v. Hinsley*, 635 F.3d 950, 952 (7th Cir. 2011); *George v. Smith*, 507 F.3d 605,
8 607 (7th Cir. 2007); *Mackey v. Price*, 2020 WL 7319420, at *3–4 (E.D. Cal. Dec. 11, 2020),
9 report and recommendation adopted, 2021 WL 843462 (E.D. Cal. Mar. 5, 2021). Plaintiff may
10 bring a claim against multiple defendants so long as (1) the claim arises out of the same
11 transaction or occurrence, or series of transactions and occurrences, and (2) there are commons
12 questions of law or fact. Fed. R. Civ. P. 20(a)(2); *Coughlin v. Rogers*, 130 F.3d 1348, 1351 (9th
13 Cir. 1997). The “same transaction” requirement refers to similarity in the factual background of a
14 claim. *Id.* at 1349. Only if the defendants are properly joined under Rule 20(a) will the Court
15 review the other claims to determine if they may be joined under Rule 18(a), which permits the
16 joinder of multiple claims against the same party.

17 Plaintiff may not raise different claims against different defendants in a single action. For
18 instance, Plaintiff may not, in a single case, assert a claim related to the force used on August 30,
19 2022 with medical claims and use of force by different defendants on a different day such as
20 September 8, 2022.

21 **C. Excessive Force**

22 It is unclear if Plaintiff is a pretrial detainee or a convicted inmate. In any amended
23 complaint, Plaintiff must clarify whether he is a pretrial detainee or a convicted inmate, as the law
24 which applies will differ. The Court will assume he is a pretrial detainee.

25 A claim of excessive force in the context of an arrest or investigatory stop implicates the
26 Fourth Amendment right to be free from “unreasonable … seizures.” U.S. Const. amend. IV; *see*
27 *Graham v. Connor*, 490 U.S. 386, 394 (1989). “Determining whether the force used to effect a
28 particular seizure is ‘reasonable’ under the Fourth Amendment requires a careful balancing of

1 ‘the nature and quality of the intrusion on the individual's Fourth Amendment interests' against
2 the countervailing governmental interests at stake.” *Graham*, 490 U.S. at 396 (citations omitted).
3 Whether a law enforcement officer's use of force was “objectively reasonable” depends upon the
4 totality of the facts and circumstances confronting him. *Smith v. City of Hemet*, 394 F.3d 689, 701
5 (9th Cir.) (en banc) (quoting *Graham*, 490 U.S. at 397), cert. denied, 545 U.S. 1128 (2005).

6 A court must “first assess the quantum of force used to arrest the plaintiff by considering
7 the type and amount of force inflicted.” *Drummond v. City of Anaheim*, 343 F.3d 1052, 1056 (9th
8 Cir. 2003) (internal quotation marks and brackets omitted). Second, a court balances the
9 government's countervailing interests. This involves considering “the severity of the crime at
10 issue, whether the suspect poses an immediate threat to the safety of the officers or others, and
11 whether he is actively resisting arrest or attempting to evade arrest by flight.” *Graham*, 490 U.S.
12 at 396. Using these factors, a court must determine “whether the force employed was greater than
13 is reasonable under the circumstances.” *Drummond*, 343 F.3d at 1058.

14 Here, Plaintiff fails to allege the circumstances surrounding the alleged use of force,
15 including when it happened, how it happened and who was involved. Plaintiff alleges he was
16 tased. But he does not allege who tased him and the circumstances surrounding the alleged use of
17 force. Plaintiff also alleges he was tackled by the R.N., but does not allege the circumstances
18 surrounding the event, what Plaintiff was doing, what was said or other facts about the
19 circumstance. As pled, the Court cannot find that Plaintiff has stated a cognizable excessive force
20 claim.

21 Plaintiff alleges that officer Justin Garcia (p2019) and officer Adriana Ponce (p1716)
22 assaulted him by applying pressure points. Again, Plaintiff does not allege the circumstances
23 surrounding the event, what Plaintiff was doing, what was said or other facts about the
24 circumstance. As pled, the Court cannot find that Plaintiff has stated a cognizable excessive force
25 claim. Likewise, Plaintiff does not provide any facts as to the alleged excessive force by
26 Defendant Hitchner. Conclusory allegations are insufficient.

27 **D. Excessive Force by Registered Nurse**

28 Plaintiff may be seeking to allege excessive force against the registered nurse who tackled

1 him.

2 Plaintiff, however, has not named the registered nurse as a defendant. The complaint's
3 caption must contain the names of the defendants discussed in the body of the complaint. See
4 Fed. R. Civ. P. 10(a) (Rule 10(a) requires that plaintiffs include the names of all parties in the
5 caption of the complaint). The Court cannot have the complaint served on any of the parties
6 discussed in the body of the Complaint. *See Soto v. Bd. of Prison Term*, No. CIV S-06-2502 RRB
7 DAD P, 2007 WL 2947573, at *2 (E.D. Cal. Oct. 9, 2007) (The Court cannot order service of the
8 Complaint without the names of the parties included in the caption of the Complaint). Rule 10 of
9 the Federal Rules of Civil Procedure requires, among other things, that a complaint (a) state the
10 names of "all the parties" in the caption; and (b) state a party's claims in sequentially "numbered
11 paragraphs, each limited as far as practicable to a single set of circumstances." Fed. R. Civ. P. 10;
12 *Callahan v. Unknown*, No. 1:22-CV 00221 BAM PC, 2022 WL 1215260, at *3 (E.D. Cal. Apr.
13 25, 2022), report and recommendation adopted, No. 1:22-CV-221 JLT BAM, 2022 WL 1782559
14 (E.D. Cal. June 1, 2022). If Plaintiff does not know the identity of the person(s) responsible, he
15 may name them as "John Doe" or "Jane Doe."

16 In addition, it appears that Plaintiff attempts to name a private individual as a defendant.
17 To state a claim under § 1983, a plaintiff must allege: (1) the violation of a federal constitutional
18 or statutory right; and (2) that the violation was committed by a person acting under the color of
19 state law. *See West v. Atkins*, 487 U.S. 42, 48 (1988); *Jones v. Williams*, 297 F.3d 930, 934 (9th
Cir. 2002). Private individuals and entities do not act under color of state law. *See Van Ort v.*
20 *Estate of Stanewich*, 92 F.3d 831, 835 (9th Cir. 1996); *see also Kirtley v. Rainey*, 326 F.3d 1088,
21 1092 (9th Cir. 2003) ("While generally not applicable to private parties, a § 1983 action can lie
22 against a private party" only if he is alleged to be "a willful participant in joint action with the
23 State or its agents.") (citation and quotation marks omitted). "The United States Constitution
24 protects individual rights only from government action, not from private action." *Single Moms,*
25 *Inc. v. Mont. Power Co.*, 331 F.3d 743, 746–47 (9th Cir. 2003) (emphasis in original).

26 **E. Deliberate Indifference to Medical Needs**

27 It is unclear if Plaintiff is a pretrial detainee or a convicted inmate. In any amended
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1 complaint, Plaintiff must clarify whether he is a pretrial detainee or a convicted inmate, as the law
2 which applies will differ. The Court will assume he is a pretrial detainee.

3 A claim of inadequate medical care brought by a pretrial detainee arises under the
4 Fourteenth Amendment and is governed by an “objective deliberate indifference standard.” See
5 *Gordon v. County of Orange*, 888 F.3d 1118, 1124-1125 (9th Cir. 2018). In order to state a claim
6 against any defendant for denial of medical care while a pretrial detainee, Plaintiff must allege
7 that the defendant: (1) “made an intentional decision with respect to the conditions under which
8 the plaintiff was confined”; (2) the “conditions put the plaintiff at substantial risk of suffering
9 serious harm”; (3) the “defendant did not take reasonable available measures to abate that risk,
10 even though a reasonable official in the circumstances would have appreciated the high degree of
11 risk involved—making the consequences of the defendant’s conduct obvious”; and (4) “by not
12 taking such measures, the defendant caused the plaintiff’s injuries.” *Gordon*, 888 F.3d at 1125.

13 Plaintiff’s complaint does not adequately allege that any defendant provided inadequate
14 medical care under an objective deliberate indifference standard. Plaintiff’s complaint does not
15 identify any individual defendant or appropriately link any defendant—named or otherwise—to
16 his claims of deliberate indifference to medical needs. In any amended complaint, Plaintiff
17 should clearly allege what happened, when it happened and who was involved.

18 Plaintiff alleges that some officers delayed Plaintiff getting medical care because they
19 were crowded around his bedside when medical staff came to give him medical care. Plaintiff
20 must allege factual support that each defendant “did not take reasonable available measures to
21 abate that risk, even though a reasonable official in the circumstances would have appreciated the
22 high degree of risk involved—making the consequences of the defendant’s conduct obvious” or
23 that “by not taking such measures, the defendant caused the plaintiff’s injuries.” Plaintiff must
24 allege facts that this conduct was objectively unreasonable, a test that will necessarily “turn[] on
25 the facts and circumstances of each particular case.” *Gordon*, 888 F.3d at 1125.

26 Plaintiff alleges his treatment plan was not followed, but fails to allege any defendant
27 responsible. However, “a difference in medical opinion does not constitute deliberate
28 indifference.” *George v. Sonoma Cty. Sheriff’s Dep’t*, 732 F. Supp. 2d 922, 937 (N.D. Cal. 2010)

1 (citing *Sanchez v. Vild*, 891 F.2d 240, 242 (9th Cir. 1989)). “A difference of medical opinion may
2 amount to deliberate indifference if the prisoner shows that ‘the course of treatment was
3 medically unacceptable under the circumstances’ and defendants ‘chose this course in conscious
4 disregard of an excessive risk to [the prisoner’s] health.’ ” *Watson v. Veal*, 302 F. App’x 654, 655
5 (9th Cir. 2008).

6 **IV. Conclusion and Order**

7 Plaintiff’s complaint fails to comply with Federal Rule of Civil Procedure 8 and fails to
8 state a cognizable claim for relief. As Plaintiff is proceeding pro se, the Court will grant Plaintiff
9 an opportunity to amend his complaint to cure the identified deficiencies to the extent he is able to
10 do so in good faith. *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000).

11 Plaintiff’s amended complaint should be brief, Fed. R. Civ. P. 8(a), but it must state what
12 each named defendant did that led to the deprivation of Plaintiff’s constitutional rights, *Iqbal*, 556
13 U.S. at 678-79. Although accepted as true, the “[f]actual allegations must be [sufficient] to raise
14 a right to relief above the speculative level” *Twombly*, 550 U.S. at 555 (citations omitted).

15 Additionally, Plaintiff may not change the nature of this suit by adding new, unrelated
16 claims in his first amended complaint. *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007) (no
17 “buckshot” complaints).

18 Finally, Plaintiff is advised that an amended complaint supersedes the original complaint.
19 *Lacey v. Maricopa Cty.*, 693 F.3d 896, 927 (9th Cir. 2012). Therefore, Plaintiff’s amended
20 complaint must be “complete in itself without reference to the prior or superseded pleading.”
21 Local Rule 220.

22 Based on the foregoing, it is HEREBY ORDERED that:

- 23 1. The Clerk’s Office shall send Plaintiff a complaint form;
24 2. Within thirty (30) days from the date of service of this order, Plaintiff shall file an
25 amended complaint curing the deficiencies identified by the Court in this order (or file a notice of
26 voluntary dismissal); and

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28 ///

1 3. If Plaintiff fails to file an amended complaint in compliance with this order, the
2 Court will recommend dismissal of this action, with prejudice, for failure to obey a court order and
3 for failure to state a claim.

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5 IT IS SO ORDERED.

6 Dated: December 20, 2022

7 _____
8 /s/ Barbara A. McAuliffe
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10 UNITED STATES MAGISTRATE JUDGE

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